

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

KAREEM J. HOWELL,

Plaintiff,

v.

M. ZAYAS, *et al.*,

Defendants.

Case No. 2:20-cv-01929-JDP (PC)

SCREENING ORDER

ORDER THAT PLAINTIFF:

(1) NOTIFY THE COURT THAT HE  
WILL PROCEED ONLY ON THE  
CLAIMS SANCTIONED BY THIS  
ORDER AND WILL VOLUNTARILY  
DISMISS ALL OTHER DEFENDANTS  
AND AMEND TO REMOVE ALL  
OTHER CLAIMS;

(2) FILE A FIRST AMENDED  
COMPLAINT; OR

(3) NOTIFY THE COURT THAT HE  
WISHES TO STAND BY HIS  
COMPLAINT, SUBJECT TO  
DISMISSAL OF CLAIMS AND  
DEFENDANTS CONSISTENT WITH  
THIS ORDER

ECF No. 1

THIRTY-DAY DEADLINE

Plaintiff Kareem J. Howell is a state prisoner proceeding without counsel in this civil rights action brought under 42 U.S.C. § 1983. Plaintiff's complaint, ECF No. 1, is before the court for screening under 28 U.S.C. § 1915A. He alleges that the defendants violated his First

Amendment rights by labeling him a ‘snitch’ in retaliation for his filing of staff complaints and lawsuits against them. ECF No. 1 at 3. Plaintiff claims that defendants’ actions also violated his Eighth Amendment rights. *Id.*

I find that plaintiff has stated, for screening purposes, cognizable First Amendment retaliation and Eighth Amendment failure to protect claims against defendants Zayas and Konrad. All other defendants and claims will be dismissed with leave to amend for the reasons described below.

Additionally, plaintiff has filed an application to proceed in forma pauperis (ECF No. 2) which, together with his trust fund account statement (ECF No. 5), makes the proper showing and will be granted.<sup>1</sup>

#### SCREENING AND PLEADING REQUIREMENTS

A federal court must screen a prisoner’s complaint that seeks relief against a governmental entity, officer, or employee. *See* 28 U.S.C. § 1915A(a). The court must identify any cognizable claims and dismiss any portion of the complaint that is frivolous or malicious, fails to state a claim upon which relief may be granted, or seeks monetary relief from a defendant who is immune from such relief. *See* 28 U.S.C. § 1915A(b)(1), (2).

A complaint must contain a short and plain statement that plaintiff is entitled to relief, Fed. R. Civ. P. 8(a)(2), and provide “enough facts to state a claim to relief that is plausible on its face,” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). The plausibility standard does not require detailed allegations, but legal conclusions do not suffice. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). If the allegations “do not permit the court to infer more than the mere possibility of misconduct,” the complaint states no claim. *Id.* at 679. The complaint need not identify “a precise legal theory.” *Kobold v. Good Samaritan Reg’l Med. Ctr.*, 832 F.3d 1024, 1038 (9th Cir. 2016). Instead, what plaintiff must state is a “claim”—a set of “allegations that give rise to an enforceable right to relief.” *Nagrampa v. MailCoups, Inc.*, 469 F.3d 1257, 1264 n.2 (9th Cir. 2006) (en banc) (citations omitted).

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<sup>1</sup> Plaintiff must pay the filing fee in accordance with the concurrently filed collection order.

1 The court must construe a pro se litigant's complaint liberally. *See Haines v. Kerner*, 404  
 2 U.S. 519, 520 (1972) (per curiam). The court may dismiss a pro se litigant's complaint "if it  
 3 appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which  
 4 would entitle him to relief." *Hayes v. Idaho Corr. Ctr.*, 849 F.3d 1204, 1208 (9th Cir. 2017).  
 5 However, "'a liberal interpretation of a civil rights complaint may not supply essential elements  
 6 of the claim that were not initially pled.'" *Bruns v. Nat'l Credit Union Admin.*, 122 F.3d 1251,  
 7 1257 (9th Cir. 1997) (quoting *Ivey v. Bd. of Regents*, 673 F.2d 266, 268 (9th Cir. 1982)).

#### 8 ANALYSIS

9 Plaintiff alleges that, on September 23, 2020, defendant Zayas approached a cell near his  
 10 and asked the inmate inside whether he wanted to "come out as a witness for the 'snitch' Howell  
 11 over here in cell # 101." ECF No. 1 at 3. The other inmate replied that he would not be a witness  
 12 for a 'snitch' and that plaintiff would now be targeted for death. *Id.* As he was leaving, Zayas  
 13 told plaintiff that he would not be successful in his suit against defendant Konrad. *Id.* Plaintiff  
 14 alleges that Zayas was acting at Konrad's direction. *Id.* Later that day, defendants Konrad and  
 15 Zayas approached plaintiff's cell and, after acknowledging that he had sued them, told him that  
 16 "you don't got shit coming." *Id.* at 4. These allegations are enough to state a First Amendment  
 17 retaliation and Eighth Amendment failure to protect claim against both defendants.

18 Plaintiff has not alleged viable claims against the other named defendants—Vitale,  
 19 Darling, and Spangler. After reviewing the complaint, I can find no allegations against either  
 20 Vitale or Darling. Spangler is only alleged to have denied one of plaintiff's grievances. *Id.* at 3.  
 21 That is not enough to state a constitutional claim against him. *See Ramirez v. Galaza*, 334 F.3d  
 22 850, 860 (9th Cir. 2003) ("Ramirez's claimed loss of a liberty interest in the processing of his  
 23 appeals does not satisfy this standard, because inmates lack a separate constitutional entitlement  
 24 to a specific prison grievance procedure."). These defendants and the claims against them will be  
 25 dismissed with leave to amend.

#### 26 LEAVE TO AMEND

27 If he chooses to amend, plaintiff is cautioned that any amended complaint must identify as  
 28 a defendant only persons who personally participated in a substantial way in depriving him of his

1 constitutional rights. *Johnson v. Duffy*, 588 F.2d 740, 743 (9th Cir. 1978). Plaintiff may also  
2 include any allegations based on state law that are so closely related to his federal allegations that  
3 “they form the same case or controversy.” *See* 28 U.S.C. § 1367(a). The amended complaint  
4 must also contain a caption including the names of all defendants. Fed. R. Civ. P. 10(a). Plaintiff  
5 may not change the nature of this suit by alleging new, unrelated claims. *See George v. Smith*,  
6 507 F.3d 605, 607 (7th Cir. 2007).

7 Any amended complaint must be written or typed so that it so that it is complete in itself  
8 without reference to any earlier filed complaint. E.D. Cal. L.R. 220. This is because an amended  
9 complaint supersedes any earlier filed complaint, and once an amended complaint is filed, the  
10 earlier filed complaint no longer serves any function in the case. *See Forsyth v. Humana*, 114  
11 F.3d 1467, 1474 (9th Cir. 1997) (the ““amended complaint supersedes the original, the latter  
12 being treated thereafter as non-existent.””) (*quoting Loux v. Rhay*, 375 F.2d 55, 57 (9th Cir.  
13 1967)).

14 The amended complaint should be as concise as possible in fulfilling the above  
15 requirements. Fed. R. Civ. P. 8(a). Plaintiff should avoid the inclusion of procedural or factual  
16 background which has no bearing on his legal claims. He should also take pains to ensure that his  
17 amended complaint is as legible as possible. This refers not only to penmanship, but also spacing  
18 and organization. Plaintiff should consider whether each of the defendants he names had  
19 involvement in the constitutional violations he alleges. A “scattershot” approach in which  
20 plaintiff names dozens of defendants will not be looked upon favorably.

21 Accordingly, it is ORDERED that

- 22 1. Plaintiff’s application to proceed in forma pauperis (ECF No. 2) is GRANTED.
- 23 2. Plaintiff’s complaint (ECF No. 1) states, for screening purposes, viable First  
24 Amendment retaliation and Eighth Amendment failure to protect claims against defendants Zayas  
25 and Konrad.
- 26 3. All other claims and defendants in the complaint are DISMISSED with leave to  
27 amend within thirty days of service of this order.

1           4.       Within thirty days plaintiff shall return the notice below advising whether he elects  
2 to proceed with the cognizable claims identified above or file an amended complaint. If the  
3 former option is selected and returned, the court will enter an order directing service at that time.

4           5.       Failure to comply with any part of this this order may result in dismissal for failure  
5 to prosecute.

6 DATED: October 21, 2020

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UNITED STATES MAGISTRATE JUDGE

UNITED STATES DISTRICT COURT  
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KAREEM J. HOWELL,

Plaintiff,

v.

M. ZAYAS, *et al.*,

Defendants.

Case No. 2:20-cv-01929-JDP

NOTICE OF ELECTION

In accordance with the court's Screening Order, plaintiff hereby elects to:

(1) \_\_\_\_\_ proceed only with the First Amendment retaliation and Eighth Amendment failure to protect claims against defendants Zayas and Konrad.

OR

(2) \_\_\_\_\_ delay serving any defendant and files an amended complaint.

\_\_\_\_\_  
Plaintiff

Dated: